

233008

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Utilities Services of
South Carolina, Inc. for adjustment of
rates and charges and modifications to
certain terms and conditions for the
provision of water and sewer service.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2007 - 286 - W/S

(Please type or print)

Submitted by: John M. S. Hoefer

SC Bar Number: 2549

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Columbia, SC 29202-8416

Other: _____

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☒ Request for item to be placed on Commission's Agenda
expeditiously

☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion(s)	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input checked="" type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

Reset Form

233008

WILLOUGHBY & HOEFER, P.A.

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*ALSO ADMITTED IN TX

October 21, 2011

VIA HAND DELIVERY

The Honorable Jocelyn D. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
Post Office Box 11649
Columbia, South Carolina 29211

RE: Application of Utilities Services of South Carolina, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service. Docket No.: 2007-286-WS

Dear Mrs. Boyd:

Enclosed please find the original and eleven (11) copies of (a) the **Motion to Preclude Testimony and to Strike Protests** and (b) the **Alternative Motion in Limine** of Utilities Services of South Carolina, Inc. ("USSC") in the above-referenced matter.

Please accept these documents for filing and return a copy of each to me, bearing your file-stamp, via our courier.

By copy of this letter, I am serving a copy of both documents upon counsel for the only other party of record, the Office of Regulatory Staff, and enclose a Certificate of Service to that effect.

Also, and as a courtesy only, I am making the persons referenced in the within motions aware of their filing by copy of this letter.

The Honorable Jocelyn D. Boyd

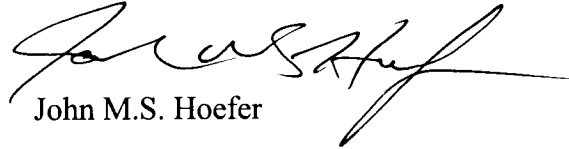
October 21, 2011

Page 2

If you have any questions or if you need any additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.



John M.S. Hoefer

JMSH/ccm

Enclosures

cc: Nanette S. Edwards, Esquire
Jeffrey Nelson, Esquire
Ms. Frankie Eaker
Mr. Richard Pascal, Jr.
Ms. Leslie Hendrix
Mr. John Broom
Ms. Linda Shirley
Ms. Kimberly Kincaid
Mr. John Stockdell
Ms. Melanie Wilson
Mr. Kenneth Cheek
Mr. Larry McAlister

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-286-WS



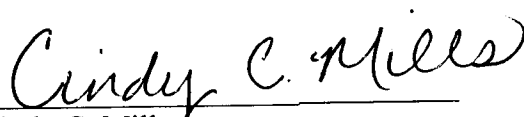
IN RE:

Application of Utilities Services of
South Carolina, Inc. for adjustment of
rates and charges and modifications to
certain terms and conditions for the
provision of water and sewer service.

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of Utilities Services of South Carolina, Inc.'s **Motion to Preclude Testimony and to Strike Protests** and (1) copy of Utilities Services of South Carolina, Inc.'s **Alternative Motion in Limine** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire
Jeffrey Nelson, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201


Cindy C. Mills

Columbia, South Carolina
This 21st day of October, 2011.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-286-W/S

IN RE:

Application of Utilities Services of
South Carolina, Inc. for adjustment of
rates and charges and modifications to
certain terms and conditions for the
provision of water and sewer service.

**MOTION TO PRECLUDE TESTIMONY
AND TO STRIKE PROTESTS**

Utilities Services of South Carolina, Inc. ("USSC" or "Company"), pursuant to Vol. 26 S.C. Code Ann. Reg.103-829, hereby moves the Commission to preclude any testimony proposed to be offered by Frankie Eaker, Richard Pascal, Leslie Hendrix, and John Stockdell (collectively referred to as the "Proposed Protestants") and Melanie Wilson, Kenneth Cheek, John Broom, Linda Shirley, Larry W. McAlister and Kimberly Kincaid, and to strike the protests of these persons made after September 21, 2007, from the public file in this matter. The grounds for this motion are as follows:

1. On August 17, 2007, the Commission issued its Notice of Filing and Hearing ("NOFH") in the above-captioned proceeding in accordance with RR. 103-804.I and J of the Commission's Rules of Practice and Procedure. Therein, the Commission required that "[a]ny person who wishes to testify and present evidence at the hearing" in this docket so notify the Commission, the Office of Regulatory Staff and counsel for USSC in writing on or before September 21, 2007. Cf. R.103-804(E), (R) of the Commission's Rules of Practice and Procedure. Thereafter, the

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Commission's Docketing Department issued a letter of instructions to USSC, also dated August 17, 2007, requiring USSC to publish the NOFH in newspapers of general circulation and to provide a copy of same to its affected customers in accordance with R.103-817.C.3 of the Commission's Rules of Practice and Procedure. Proof of compliance with this requirement was provided by USSC and accepted by the Commission. See Order No. 2008-96, February 11, 2008, at 2.

2. None of the Proposed Protestants submitted a letter of protest and written notice of their wish to testify in this proceeding in accordance with the NOFH.

3. On August 15, 2011, the Commission issued its Notice of Hearing and Prefile Testimony Deadlines Regarding Remand from the South Carolina Supreme Court in this matter ("Remand NOH"). Therein, the Commission set "a hearing regarding the Supreme Court's Order on Remand" and provided therein that it would receive testimony from the parties of record in this proceeding on the three specific issues identified in the Remand NOH. The Remand NOH does not, however, provide for testimony by any person or entity other than the parties of record, which are USSC and ORS. This omission of any reference to testimony by non-parties in the Remand NOH is correct in view of the Supreme Court's specific holdings in *Utilities Services of South Carolina v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 708 S.E.2d 755 (2011) that

(a) USSC was entitled to "the presumption of reasonableness with respect to expenditures not called into question by customer testimony or by any other source" (392 S.C. at 111, 708 S.E.2d 763),

(b) "the [Commission] should have credited [USSC] with the expenses that were not challenged" (392 S.C. at 112, 708 S.E.2d at 764), and

(c) “on remand, after giving Utility the opportunity to meaningfully respond to the evidence challenging the rate increase recommended by ORS, the [Commission] must determine whether, even excluding any expenses if finds imprudent, Utility’s expenses have increased since its last rate application such that it might be entitled to an increase in its rates” (*Id.*).

In view of the express holdings of the Supreme Court, it is therefore beyond peradventure that testimony on remand is limited to providing USSC its opportunity to address customer testimony now in the record addressed to the company’s claimed expenditures.¹ The Commission’s Order No. 2011-542 in this docket recognizes this fact in ruling “that it may hold an evidentiary hearing in this matter, to take evidence **limited to the matters cited by the Supreme Court.**” *Id.* at 3 (emphasis supplied).

4. On varying dates subsequent to the issuance of the Remand NOH and Order No. 2011-542, the Commission has received letters of protest from the Proposed Protestants (two from Mr. Eaker), some of whom request an opportunity to testify and present evidence at the hearing scheduled in this matter for November 7, 2011 (the “Remand Hearing”). One of these letters, specifically from Leslie Hendrix, states that it may be amended or supplemented. *See* Letter of Protest of Leslie Hendrix, October 3, 2011, at 6.

5. As noted above, the Remand NOH does not provide that testimony or other evidence will be received by any person or entity other than the parties of record in this matter. *Cf.* R. 103-804.J of the Commission’s Rules of Practice and Procedure. Even if the Remand NOH did so provide, the allowance of testimony from the Proposed Protestants would be in direct contravention of the Supreme Court’s holdings in *Utilities Services of South Carolina v. South*

¹ As previously established in this remand proceeding, ORS would have the right to file testimony as well. As the Commission is aware, ORS has chosen not to do so.

Carolina Office of Regulatory Staff described above, which make clear that (1) USSC is entitled to present evidence to respond to the **prior** customer testimony with respect to expenditures for capital improvements in a given neighborhood or subdivision and expenditures for on-going operational programs **and** (2) the absence of prior customer testimony in that regard entitled USSC to the benefit of the presumption of reasonableness with respect to any of USSC's claimed expenditures. If the Proposed Protestants are permitted to testify regarding USSC's expenditures for capital improvements and on-going operational programs or any other matter, USSC will have been once again denied the benefit of its due process rights and the legal presumption to which its expenditures are entitled which are clearly established by the Supreme Court's opinion in *Utilities Services*.

6. With respect to the request of Melanie Wilson, who did timely file a letter of protest, she has already testified with respect to the issue of capital improvements and on-going operational programs in her subdivision, Lakewood. *See* Hearing Transcript, November 7, 2007, Vol. 2, p. 24, ll. 22-24. Similarly, Mr. Broom timely filed a letter of protest and has already testified in this matter with respect to capital improvements and on-going operational programs in the Lakewood subdivision. *See* Hearing Transcript, December 13, 2007, Vol. 3, p. 42, ll. 18-19, 23-24; p.44, ll.15-21. Likewise, Mr. Cheek has heretofore timely filed a letter of protest and testified with regard to the Company's services in the Lakewood subdivision. *See* Hearing Transcript, December 13, 2007, Vol. 3, p. 91, l. 14 - p.93, l.12. To permit Ms. Wilson, Mr. Broom and Mr. Cheek to supplement their prior testimony with respect to expenditures for capital improvements and on-going operational programs in their subdivision would directly contravene the Supreme Court's opinion, which remanded this matter to the Commission for the express purpose of

allowing USSC to provide evidence in response to their testimonies – not to allow Ms. Wilson, Mr. Broom and Mr. Cheek to add to their testimonies or surrebut the testimony of the Company’s remand witness. As to Ms. Shirley, Mr. McAlister and Ms. Kincaid, even though they submitted letters of protest indicating a desire to testify under oath, none of them appeared and testified at any of the hearings held by the Commission in this docket which were publicly noticed. To permit Ms. Shirley, Mr. McAlister and Ms. Kincaid to now submit a further protest for the public file or present testimony would be not only procedurally improper, but contrary to the Supreme Court’s holding in *Utilities Services*, for the reasons discussed above.

7. Moreover, even if the substance of the Proposed Protestants’ letters and any associated testimony was proper for consideration by the Commission in the remand hearing, which USSC disputes, they have not timely requested to have their protests heard by the Commission. By the NOFH, the Proposed Protestants were given notice of the manner in and time period within which they could become protestants in this docket. *See* R.103-804.I.2 of the Commission’s Rules of Practice and Procedure. The Proposed Protestants’ letters of protest have not been submitted within the time period established by the Commission in the NOFH and should therefore be stricken from the public file in this docket as being untimely.

8. Similarly, by the NOFH the Proposed Protestants were given notice of the manner in and time period within which they could obtain the right to testify and present evidence in this docket. *See* RR.103-804.R, 103-827.B of the Commission’s Rules of Practice and Procedure. The Proposed Protestants therefore cannot be permitted to offer testimony as they have not complied with the requirements of the NOFH in this regard.

9. In effect, the Proposed Protestants and Ms. Wilson, Ms. Kincaid, Ms. Shirley, Mr.

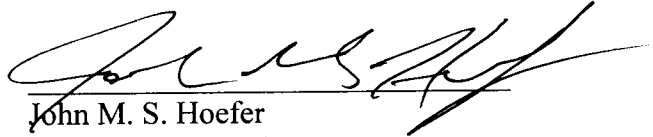
McAllister, Mr. Cheek and Mr. Broom seek to engage in surrebuttal² of the pre-filed testimony of the Company's remand witness, Steven M. Lubertozzi, CPA. In addition to being in direct contravention of the holdings of the Supreme Court in *Utilities Services, supra*, the above-cited Commission Rules of Practice and Procedure given effect in the NOFH and Remand NOH, and the procedure determined by the Commission for this remand proceeding in Order No. 2011-542 as discussed *supra*, permitting additional or supplemental customer testimony would constitute an arbitrary and unprecedented expansion of protestant rights in matters before the Commission such that these persons would be given the rights of a party of record without having taken the steps to be accorded those rights. These individuals are not parties of record and to permit them the right to testify at this stage would therefore be improper. *See* S.C. Const. art. I, §22, 330 *Concord Street Neighborhood Ass'n v. Campsen* 309 S.C. 514, 424 S.E.2d 538 (Ct. App. 1992) (holding that, although not bound by the doctrine of *stare decisis*, an administrative agency may not arbitrarily depart from its prior precedents).

WHEREFORE, having fully set forth its Motion, USSC moves that the Proposed Protestants and Ms. Wilson, Ms. Kincaid, Ms. Shirley, Mr. McAlister, Mr. Cheek and Mr. Broom be precluded from testifying at the remand hearing in this matter and that their untimely protests and those of the Proposed Protestants be stricken and not placed in the Commission's public file in this matter. USSC requests that this Motion be deemed continuing in nature such

² *See Holmes v. State*, 119 Md.App. 518, 524, 705 A.2d 118, 121 (1998) (quoting *Solko v. State Roads Comm'n*, 82 Md.App. 137, 149, 570 A.2d 373 (1990)) (stating that "[s]urrebuttal is essentially a rebuttal to a rebuttal."). Because the purpose of surrebuttal is to provide **parties** with the opportunity to respond to rebuttal testimony, the scope of surrebuttal testimony is limited to responding to new matter or new evidence raised in rebuttal. *See U.S. v. Barnette*, 211 F.3d 803, 821 (4th Cir. 2000) ("Surrebuttal evidence is admissible to respond to any new matter brought up on rebuttal.").

that it be deemed to apply to any other such persons seeking to provide testimony or file protests in this matter on remand.³

Respectfully submitted,



John M. S. Hoefer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Utilities Services
of South Carolina, Inc.

This 21st day of October, 2011.
Columbia, South Carolina

³ The within motion should not be read as acknowledging in any way the relevance, materiality, or truthfulness of an allegation set forth in the letters of protest that are the subject of the instant motion. Particularly with reference to the letter of protest submitted by Ms. Hendrix, USSC submits that same contains patently false statements. Further, and contemporaneously herewith, USSC is submitting an alternative motion *in limine* to limit the testimony of the aforementioned persons to the matters specified for remand in the Supreme Court's decision, the Commission's order and the Remand NOH.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-286-W/S

IN RE:

Application of Utilities Services of
South Carolina, Inc. for adjustment of
rates and charges and modifications to
certain terms and conditions for the
provision of water and sewer service.

ALTERNATIVE MOTION IN LIMINE

Utilities Services of South Carolina, Inc. ("USSC" or "Company"), pursuant to R.103-829 of the Commission's Rules of Practice and Procedure, hereby moves the Commission in the alternative¹ to limit the testimony of any non-parties who may be permitted to testify in the remand hearing in this matter to the issues described in the Commission's Order No. 2011-542 and its Notice of Hearing in this docket. The grounds for this motion are as follows:

1. On August 15, 2011, the Commission issued its Notice of Hearing and Prefile Testimony Deadlines Regarding Remand from the South Carolina Supreme Court in this matter ("Remand NOH"). Therein, the Commission set "a hearing regarding the Supreme Court's Order on Remand" and provided that it would receive testimony from the parties of record in this proceeding on the following three issues:

- i. Specific capital improvements by project and dollar amount that the Company made on a neighborhood-by-neighborhood basis from January 1, 2005, through December 31, 2006, and how these expenditures contributed to improved service;

¹ Contemporaneously herewith, USSC has submitted for the Commission's consideration a Motion to Preclude Testimony and Strike Protests ("Motion to Preclude and Strike") which, if granted, would make the within motion moot. Accordingly, the within motion is presented in the alternative.

Q. 188

- ii. Specific ongoing operations programs by project and dollar amount instituted from January 1, 2005, through December 31, 2006, and how these expenditures contributed to improved service; and
- iii. Information comparing Bio-Tech's prices related to sludge hauling to the prices of Bio-Tech's competitors for the same service during the period January 1, 2006, through December 31, 2006.

2. The description of the issues proper for consideration in this matter, as set out in the Remand NOH, is consistent with the Supreme Court's specific holdings in *Utilities Services of South Carolina v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 708 S.E.2d 755 (2011).²

3. On varying dates since the issuance of the Remand NOH, the Commission has received letters of protest from persons purporting to protest on remand any rate increase, some of whom also request an opportunity to testify and present evidence at the hearing scheduled in this matter for November 7, 2011 (the "Remand Hearing").³

4. Should the Commission be disposed to permit such protests and testimony, USSC submits that the Commission should limit same to the three (3) specific issues identified in the Remand NOH. Accordingly, and by way of example and not limitation, protests and testimony seeking to raise issues involving (a) matters pertaining to USSC other than those set out in the Remand NOH, (b) entities other than USSC (including entities owned by Utilities, Inc. operating

² See *id.*, 392 S.C. at 107, 708 S.E.2d at 761 (holding that USSC was entitled to a meaningful opportunity to respond to the Commission's questions, was entitled to a presumption of reasonableness as to unchallenged expenses, and could not be denied rate relief where only some of its claimed expenses were challenged).

³ See Motion to Preclude and Stike.

within or without the State of South Carolina, (c) matters that have been heard and decided by the Commission in other proceedings from which no appeal has been taken, (d) matters which are the law of the case in the instant proceeding, (e) matters which do not pertain to the test year in this case (2006), and (f) matters which constitute hearsay.

5. With respect to the October 3, 2011, letter of Leslie Hendrix, and any testimony which she may be permitted to give, USSC further submits as follows:

- a. Ms. Hendrix's proposed evidence in support of the contention that the current rate design approved by the Commission for USSC's distribution-only water charge customers should be modified or eliminated to address system leakage would not be proper for consideration by the Commission on remand. In addition to being beyond the scope of the Remand NOH and Order No. 2011-542, allowing evidence of this type is inconsistent with the decision in *Utilities Services*. The Supreme Court acknowledged the leakage question raised by customers, but did not remand this case to the Commission for the taking of additional evidence on the issue. To the contrary, the Court remanded the rate design issue for a determination by the Commission based upon the evidence of record, holding that although a comparison of USSC's rates to those of governmental utilities without more is inappropriate, "the Commission may consider whether the structure of the requested rate increase is unfair, such that a different method of raising the necessary revenues might be preferable." *Utilities Services, supra*, 392 S.C. at 113-4, 708 S.E.2d at 764-5. Thus, the existence or extent of leakage in the USSC system is not properly before the Commission on remand. Moreover, no

alternative rate design which would permit USSC to recover “the necessary revenues” has been proposed in this matter. Furthermore, Ms. Hendrix has already litigated this issue before the Commission and received a determination thereupon which she did not appeal. See Order No. 2010-11, Docket No. 2009-102-W at pp. 3,6. It is therefore *res judicata*. Thus, the rate design issue addressed in Ms. Hendrix’s protest letter can only be raised by her in USSC’s next rate relief proceeding, not in the pending proceeding (which had been heard and decided by the Commission prior to the institution of Ms. Hendrix’s complaint in Docket 2009-102-W). Accordingly, this portion of Ms. Hendrix’s letter and any related testimony should not be permitted.

- b. Ms. Hendrix’s proposed evidence regarding capital improvements in neighborhoods other than her own (Dutchman Shores) is improper in view of the Supreme Court’s express recognition that “the customer testimony in this case could only have ‘rais[ed] the specter of imprudence’ as to expenditures that Utility claimed to have incurred **in neighborhoods where customers alleged no improvements were made. These customers could offer no insight into whether [USSC] made capital improvements in other neighborhoods.**” *Utilities Services, supra*, 392 S.C. at 111, 708 S.E.2d at 763 (**emphasis added**). Having failed to avail herself of the opportunity to testify at the prior hearings in this matter, Ms. Hendrix has herself never before raised this issue in this docket. In fact, no customer from Dutchman Shores subdivision has testified in this docket with respect to capital improvements in that neighborhood – or any other.

Accordingly, any evidence from Ms. Hendrix regarding capital improvements in another subdivisions or neighborhoods would be improper in view of the Court's holding in this regard.

- c. Ms. Hendrix's proposed evidence consisting of testimony she (or other persons) may have given in other proceedings is not proper for consideration by the Commission in this docket. As the Commission has ruled in one of the same proceedings from which Ms. Hendrix seeks to have testimony incorporated as evidence in this case (i.e., Docket No. 2011-47-WS), it is inconsistent with USSC's due process rights to have testimony from one matter adopted in another matter.
- d. Ms. Hendrix's proposed evidence consisting of statements or publications of third parties are hearsay and therefore inadmissible.
- e. Ms. Hendrix's proposed testimony relating to USSC's answer to the ORS petition for reconsideration in connection with the remand proceeding is improper as that pleading was, without objection, withdrawn and is therefore no longer before the Commission. Accordingly, this evidence should not be permitted to be introduced.
- f. Ms. Hendrix's proposed evidence consisting of testimony and documents relating to the **current** USSC system serving her subdivision (Dutchman Shores) is irrelevant to the issue of the capital improvements and on-going operational programs in that subdivision during the period in question in this remand proceeding (i.e., 2005 and 2006). Accordingly, such evidence should not be

permitted to be introduced.

- g. Ms. Hendrix's proposed testimony regarding the establishment of rates on a consolidated (i.e., water and sewer) basis and the accounting treatment of specific line items in capital improvements (i.e., labor) are not proper for consideration in the remand proceeding given that they are beyond the scope of the issues remanded by the Supreme Court and reflected in the Remand NOH. As to the accounting treatment for labor, this issue was also addressed and decided in Ms. Hendrix's complaint proceeding. See Order No. 2010-11 at p.8. Accordingly, this issue is also *res judicata*.

6. With respect to the September 9, 2011, letter of Melanie Wilson, and any testimony which she may be permitted to give, USSC further submits as follows:

- a. Ms. Wilson seeks to raise an issue of rate subsidization arising out of her status as a distribution-only water customer. This issue was not previously raised in this docket, is not within the scope of the Supreme Court remand, Order No. 2011-542 or the Remand NOH, and is therefore not properly considered on remand. Accordingly, any evidence in this regard should not be permitted.
- b. Ms. Wilson seeks to have years beyond the test year (2006) and the years at issue on remand (2005-2006) considered in connection with her rate subsidization issue. These years are beyond the scope of the issues remanded by the Court and reflected in the Remand NOH. Accordingly, any evidence in this regard should not be permitted.

7. With respect to the October 18, 2011, letter of Kenneth Cheek, and any testimony which he may be permitted to give, USSC further submits as follows:

- a. Mr. Cheek seeks to raise an issue regarding rates paid by customers of other utilities in his “area”. The Supreme Court held in this matter that a comparison of USSC’s rates with those of other utilities can only be permitted if there is “a showing that those entities are sufficiently similar to [USSC] to allow a meaningful comparison.” *Utilities Services, supra*, 392 S.C. at 114, 708 S.E.2d at 765. It did not, however, remand the case for additional evidence on that point. Moreover, the only evidence of record on that point is that such a comparison is not appropriate in view of the disparity between USSC and the governmental utilities serving the Anderson County area in which Mr. Cheek resides. Tr. P. 218, ll. 1-17.] Accordingly, this issue is not proper for consideration on remand and no testimony or other evidence in this regard should be permitted.
- b. Mr. Cheek seeks to raise an issue with respect to leakage and the distribution-only component of the Company’s Commission approved water-rate design. For the reasons discussed in paragraph 6(a) above, testimony or other evidence on this point is not proper for consideration in this remand proceeding and should therefore not be permitted.
- c. Mr. Cheek seeks to raise current billing, customer service and meter maintenance and reading issues. These, too, are issues beyond the scope of the remand by the Supreme Court and recognized in Order No. 2011-542 and the Remand NOH. Accordingly, testimony or other evidence directed toward these issues should not

be permitted.

8. With respect to the October 17, 2011, letter of Frankie L. Eaker, and any testimony which he may be permitted to give, USSC further submits as follows:

a. Mr. Eaker seeks to raise an issue regarding unaccounted for water in the Hill and Dale subdivision. This is an issue beyond the scope of the remand by the Supreme Court and recognized in Order No. 2011-542 and the Remand NOH. Accordingly, testimony or other evidence directed toward this issue should not be permitted.

9. With respect to the October 3, 2011, letter of Richard Pascal, Jr., and any testimony he may be permitted to give, USSC further submits as follows:

a. Mr. Pascal seeks to raise an issue regarding rates paid by persons “in the Chapin area”. The Supreme Court held in this matter that a comparison of USSC’s rates with those of other utilities can only be permitted if there is “a showing that those entities are sufficiently similar to [USSC] to allow a meaningful comparison.” *Utilities Services, supra*, 392 S.C. at 114, 708 S.E.2d at 765. It did not, however, remand the case for additional evidence on that point. Moreover, the only evidence of record on that point is that such a comparison is not appropriate in view of the disparity between USSC and governmental utilities. Tr. P. 218, ll. 1-17.] Accordingly, this issue is not proper for consideration on remand and no testimony or other evidence in this regard should be permitted.

b. Mr. Pascal seeks to raise an issue regarding customer service. This is an issue beyond the scope of the remand by the Supreme Court and recognized in Order

No. 2011-542 and the Remand NOH. Accordingly, testimony or other evidence directed toward this issue should not be permitted.

- c. Mr. Pascal seeks to raise an issue regarding system leakage. In addition to being beyond the scope of the Remand NOH and Order No. 2011-542, allowing evidence of this type is inconsistent with the decision in *Utilities Services*. The Supreme Court acknowledged the leakage question raised by customers, but did not remand this case to the Commission for the taking of additional evidence on the issue. *Utilities Services, supra*, 392 S.C. at 113-4, 708 S.E.2d at 764-5. Thus, the existence or extent of leakage in the USSC system is not properly before the Commission on remand and no testimony or other evidence directed toward this issue should not be permitted.

10. With respect to the October 11, 2011, letter of John Broom, and any testimony he may be permitted to give, USSC further submits as follows:

- a. Mr. Broom seeks to raise an issue regarding rates paid by persons served directly by Hammond Water District. The Supreme Court held in this matter that a comparison of USSC's rates with those of other utilities can only be permitted if there is "a showing that those entities are sufficiently similar to [USSC] to allow a meaningful comparison." *Utilities Services, supra*, 392 S.C. at 114, 708 S.E.2d at 765. It did not, however, remand the case for additional evidence on that point. Moreover, the only evidence of record on that point is that such a comparison is not appropriate in view of the disparity between USSC and governmental utilities. Tr. P. 218, ll. 1-17.] Accordingly, this issue is not proper for consideration on

9
April

remand and no testimony or other evidence in this regard should be permitted.

- b. Mr. Broom seeks to raise current system maintenance and meter reading issues.

These are issues beyond the scope of the remand by the Supreme Court and recognized in Order No. 2011-542 and the Remand NOH. Accordingly, testimony or other evidence directed toward these issues should not be permitted.

- 11. With respect to the October 7, 2011, letter of John Stockdell, and any testimony he may be permitted to give, USSC further submits as follows:

- a. Mr. Stockdell seeks to raise issues regarding service, high bills, consumption and water pressure. These are issues beyond the scope of the remand by the Supreme Court and recognized in Order No. 2011-542 and the Remand NOH. Accordingly, testimony or other evidence directed toward these issues should not be permitted.

- b. Mr. Stockdell seeks to raise an issue regarding rates paid by a relative served directly by “the City of Chapin.” The Supreme Court held in this matter that a comparison of USSC’s rates with those of other utilities can only be permitted if there is “a showing that those entities are sufficiently similar to [USSC] to allow a meaningful comparison.” *Utilities Services, supra*, 392 S.C. at 114, 708 S.E.2d at 765. It did not, however, remand the case for additional evidence on that point. Moreover, the only evidence of record on that point is that such a comparison is not appropriate in view of the disparity between USSC and governmental utilities. Tr. P. 218, ll. 1-17.] Accordingly, this issue is not proper for consideration on remand and no testimony or other evidence in this regard should be permitted.

c. Mr. Stockdell seeks to raise an issue regarding system leakage. In addition to being beyond the scope of the Remand NOH and Order No. 2011-542, allowing evidence of this type is inconsistent with the decision in *Utilities Services*. The Supreme Court acknowledged the leakage question raised by customers, but did not remand this case to the Commission for the taking of additional evidence on the issue. *Utilities Services, supra*, 392 S.C. at 113-4, 708 S.E.2d at 764-5. Thus, the existence or extent of leakage in the USSC system is not properly before the Commission on remand and no testimony or other evidence directed toward this issue should not be permitted.

12. With respect to the October 19, 2011, letter of Larry W. McAlister, and any testimony which he may be permitted to give, USSC further submits as follows:

a. Mr. McAlister seeks to raise an issue regarding unaccounted for water in the Clearview subdivision. This is an issue beyond the scope of the remand by the Supreme Court and recognized in Order No. 2011-542 and the Remand NOH. Accordingly, testimony or other evidence directed toward this issue should not be permitted.

13. Because the protest letters subject of the instant motion do not lend themselves well to traditional (i.e., page and line number) citation methodology, USSC submits the attached copies of same reflecting redactions by USSC. Should the Commission deny USSC's Motion to Preclude and Strike and allow these letters to be placed in the public file and permit testimony with respect to the subject matter of same, USSC submits that only the un-redacted portions of said letters, and testimony relating thereto, should be accepted and considered for the reasons set

forth herein.

14. USSC requests that this Alternative Motion in Limine be deemed continuing so as to apply to any subsequent letters of protest received by the Commission in this docket which contain similar statements or otherwise are beyond the ambit of the Supreme Court's remand, Order No. 2011-542 and the Remand NOH.

WHEREFORE, having fully set forth its Alternative Motion in Limine, USSC requests that the Commission issue its order limiting the content of letters of protest placed in the public file and related testimony or other evidence sought, or to be sought, to be introduced in this proceeding, in accordance with the foregoing.

Respectfully submitted,



John M. S. Hoefer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Utilities Services
of South Carolina, Inc.

This 21st day of October, 2011.
Columbia, South Carolina

From: L.W. McAlister [<mailto:lwmcalister02@bellsouth.net>]
Sent: Tuesday, October 18, 2011 10:02 PM
To: Contact
Subject: Form Returned: Letter_of_Protest_Form_pub_0001.pdf

Form Returned: Letter_of_Protest_Form_pub_0001.pdf

Larry W. McAlister
Clearview Subdivision
312 Clearview Drive
Anderson, SC 29625-4901

Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Phone: 803-896-5100

Fax: 803-896-5199

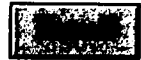
www.psc.sc.gov

Email form to: contact@psc.sc.gov

* Required Fields

Date: * October 19, 2011

Letter of Protest
in Docket * 2007 - 286 - WS



Protestant Information:

Name * Larry W. McAlister

Mailing Address * 312 Clearview Drive - Clearview Subdivision

City, State Zip * Anderson, SC 29625-4901 Phone * (864)224-2204

E-mail _____

1. What is your connection or interest in this case? * For example, are you a customer of the Company that is the subject of this pending proceeding? (This section must be completed. Attach additional information if necessary.)

I am a customer of Utilities Services of SC

2. Please give a concise statement of your protest. * (This section must be completed. Attach additional information if necessary.)

[Redacted area]

[Redacted area] We have not seen any upgrade to our water system within Clearview Subdivision. [Redacted area]
[Redacted area] With no upgrades to our system, my water pressure varies a great deal.

3. Do you wish to make an appearance at a hearing in this proceeding, if scheduled, and offer sworn testimony? * (This section should be completed.)

At this late date I do not think I can offer testimony

-----Original Message-----

From: John Broom [mailto:broom_j@bellsouth.net]

Sent: Tuesday, October 11, 2011 3:05 PM

To: Contact

Subject: docket 2007-286-ws

To: Public Service Commission,

I appose the upcoming rate increase for Utilities Services Inc for several reasons.

1. [REDACTED]

2. For the \$3 million spent by USSC. We have seen no improvements to our antiquated system in Lakewood Subdivision.

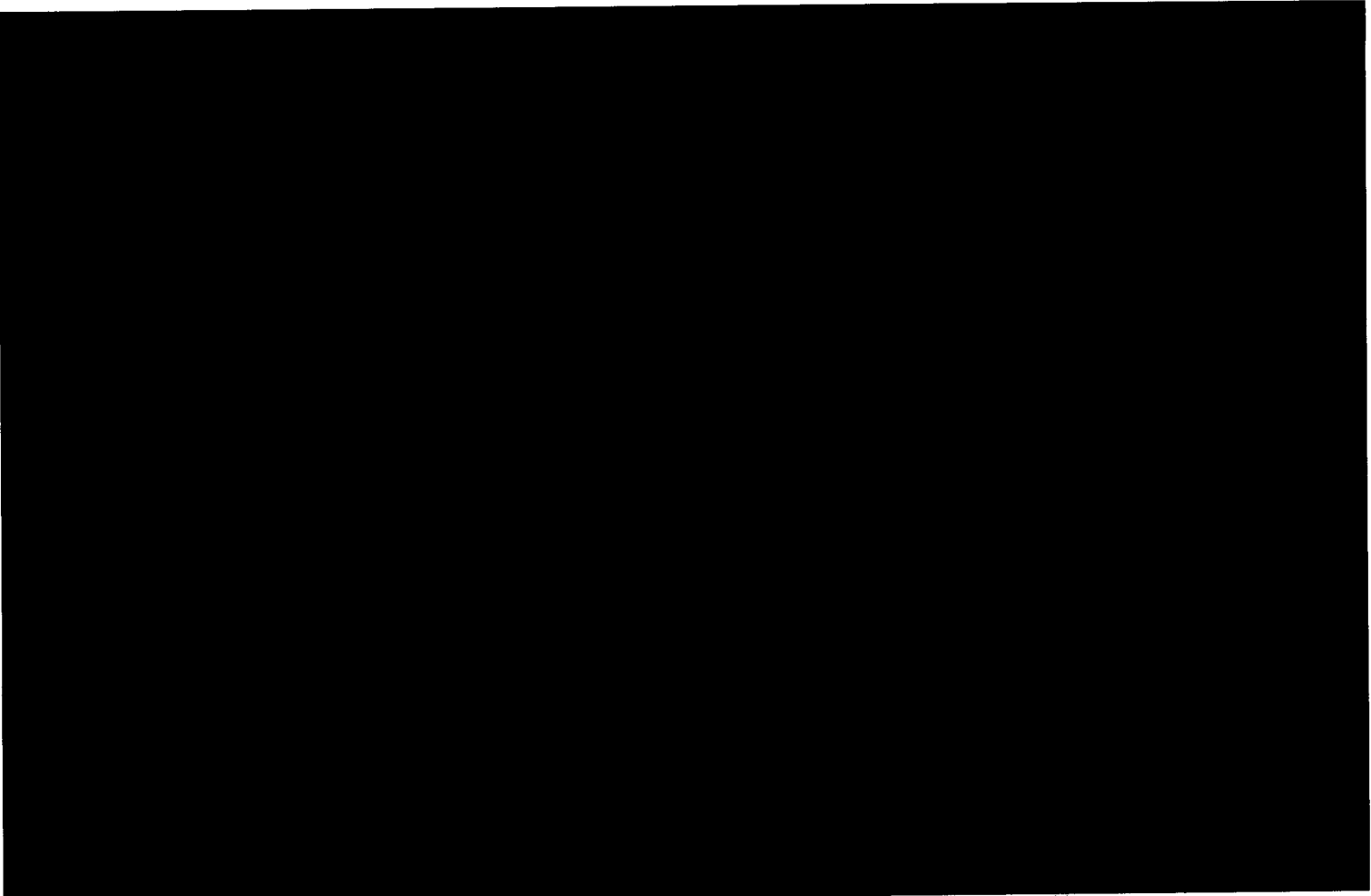
3. [REDACTED]

4. 

USSC has no justified reason for a rate increase!

Sincerely,

John Broom
300 Driftwood DR.
Anderson, SC 29621
864-375-0817




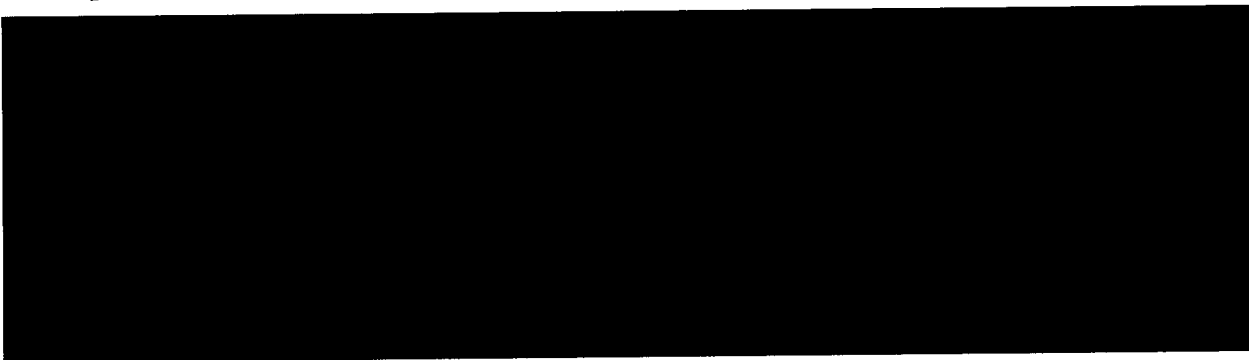
-----Original Message-----

From: jstockdell@sc.rr.com [mailto:jstockdell@sc.rr.com]

Sent: Friday, October 07, 2011 9:08 AM

To: Contact

Subject: Docket # 2007-286-WS



I never recalled any improvement projects over the years.

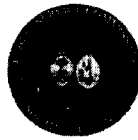
[REDACTED]

Please do not allow this company to raise our rates. [REDACTED]

[REDACTED]

John Stockdell

Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-5100
Fax: 803-896-5199
www.psc.sc.gov

Email form to: contact@psc.sc.gov

* Required Fields

Letter of Protest

Print

Email

Date: * October 03, 2011

in Docket * 2007 - 286 - WS

Protestant Information:

Name * Richard Pascal Jr.

Mailing Address * 111 Dutch Point Road

City, State Zip * Chapin, SC 29036 Phone * 803-429-4771

E-mail fcbanker56@yahoo.com

1. What is your connection or interest in this case? * For example, are you a customer of the Company that is the subject of this pending proceeding? (This section must be completed. Attach additional information if necessary.)

I am a resident of Dutchman Shores and a customer of this so called water company.

2. Please give a concise statement of your protest. * (This section must be completed. Attach additional information if necessary.)

I understand that the water company has claimed 55k in capital improvements. I would sure like to see a listing of the improvements the are claiming to have made as I have not visually seen any improvements to the system.

3. Do you wish to make an appearance at a hearing in this proceeding, if scheduled, and offer sworn testimony? *
(This section should be completed.)

It is difficult for me to schedule time off from my job. That is one reason I am sending this in writing.

[REDACTED]

From: kecheek [<mailto:kecheek@bellsouth.net>]
Sent: Monday, October 17, 2011 4:47 PM
To: Contact
Subject: Information on docket 2007-286-WS

MAIL / 11/10

Dear Public Service Commission,

RE: docket 2007-286-WS

I am writing to oppose the rate increase requested by USSC/Utilities, Inc. [REDACTED]
[REDACTED] We pay a Water Distribution Base Charge that includes nothing but the meter as for as I can tell, a Distribution Charge, a Water Supply Charge, and a SC DHEC Fee. [REDACTED]

[REDACTED] They claim \$3 million in capital improvements. I have lived at this address for almost 39 years and I haven't seen any capital improvements since Utilities, Inc. has owned our system.

[REDACTED]

Thank you for your consideration,

Kenneth Cheek
311 Lakewood Dr
Anderson, SC

29621

Leslie Hendrix
Letter of Protest for Docket 2007-286-WS on Remand
October 3, 2011

Dear Commissioners,

I write in regard to testimony provided to the SC PSC by USSC / Utilities, Inc. per order 2011-363. I believe this information to be false.

I protest the rate increase proposed by Utilities, Inc./USSC (further referred to as "UI") in docket 2007-286-WS [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

I make the general request to deny any additional revenue to this company based upon the following main points pertaining to "Answer to the Petition for Rehearing or Reconsideration" and Testimony on Remand of Steven Lubertozi for Docket 2007-286-WS:

1. Amounts claimed in UI's response to order 2011-363 pertaining to capital improvements within USSC's systems are questionable, at best.

a. UI claims to have spent \$55,863 within the Dutchman Shores subdivision during 2005 and 2006 for "capital improvements" to the system. I believe the amounts claimed for Dutchman Shores are false. Certainly, \$36,611 was not spent within Dutchman Shores on "wells and springs" since we are distribution-only customers (our water is piped to us by City of Columbia and has been since 1995). Also, to my knowledge, the only work that has been done in my neighborhood since I have lived here (which covers the 2005 and 2006 time period) by UI is for repairs of leaks or when the system was out of compliance (by SC, PSC, or DJEC Regs), which I believe would be classified as costs already included in our Base Facilities Charge and Water Distribution Charge. I also believe UI only made repairs to our system when out of compliance or having a leak. At any rate, the "capital improvements" (if any were made) did not improve our service. [REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iv. How are computers and vehicles improving my service? Don't the operators have to have vehicles to get around to the systems? Is this not a cost of service already covered in the Base Facilities Charge or Distribution Charge on my bill? The items listed as "capital improvements" do not seem like improvements to me – they seem like regular maintenance and operation costs already included in the rate base or other areas of the case.

v. [REDACTED]

vi. [REDACTED]

2. How are the supposed operation programs making service better?

a. [REDACTED]

a. [REDACTED]

[REDACTED]

[REDACTED]

UI apparently has no vacancy audit program (reference ORS Audit of Dutchman Shores, Docket 2011-47-WS, and Docket 2009-479-WS, United Utilities/UI for a few examples) in any of its 5 companies in SC.

b. [REDACTED]

[REDACTED]

c. [REDACTED]

d. [REDACTED]

3. [REDACTED]

a. [REDACTED]

b. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]

a. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

b. [REDACTED]
[REDACTED]

c. [REDACTED]
[REDACTED]
[REDACTED]

d. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] Please deny any request by UI/USSC for a rate increase. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

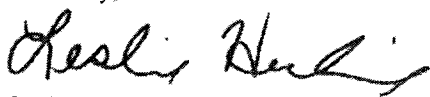
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

I have submitted a few FOI act requests to SC DHEC and SC ORS. When those requests are fulfilled, I may amend this letter of protest or send in an addition to it. I would like to speak my protest in front of the Commission, if allowed.

Thank you for your time.

Sincerely,



Leslie Hendrix

From: Stephen Wilson [<mailto:stevemel91@att.net>]

Sent: Friday, September 09, 2011 4:21 PM

To: Contact

Subject: Information for Docket 2007-286-WS

Dear Public Service Commission,

USSC was required by your order # 2011-363, Docket 2007-286-WS to provide information to show "specific capital improvements" and "specific ongoing operations programs" by project and dollar amount on a neighborhood-by-neighborhood basis from January 1, 2005, to December 31, 2006, "and how these expenditures contributed to improved service."

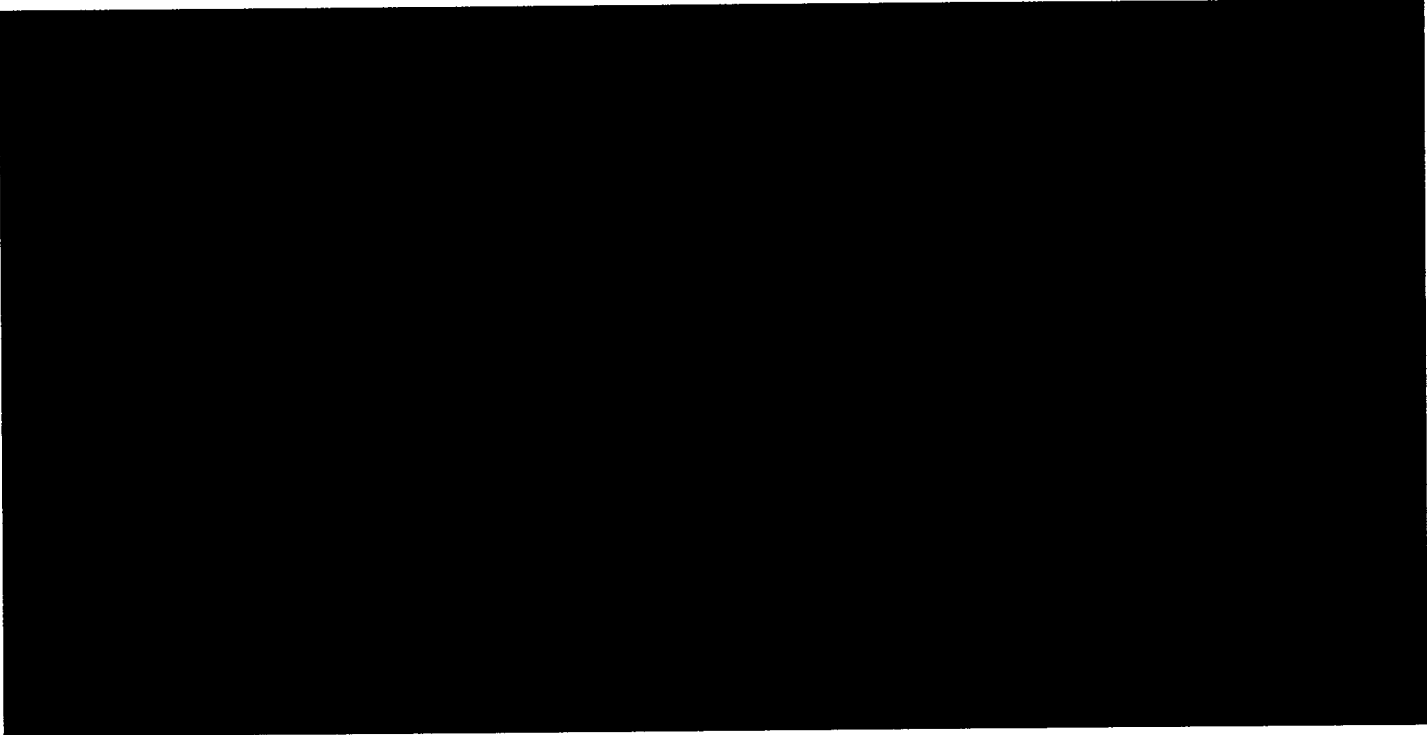
Of over 3 million dollars spent, USSC only spent \$1602 on my neighborhood, Lakewood Subdivision in Anderson. This proves that I have not benefited from these capital improvements and maintenance programs. [REDACTED]

The information you required shows USSC replaced service lines for \$270 in Lakewood Subdivision. The only lines replaced were leaking. That classifies them as emergency repairs, not capital improvements. \$287 was spent closing off wells that were no longer in service. This did not improve service since we are a distribution only system.

I have testified in two hearings that USSC has made no improvements to my system. In both this docket and also in Docket 2009-75-W, USSC has asserted in testimony that rate increases are necessary for a fair return on their investment. They also assert that they employ "a maintenance program and a capital improvements program on its water systems." Lakewood is one of eight distribution-only neighborhoods in Anderson that saw less than \$5000 spent on their systems that year. [REDACTED]

Thank you,

Melanie Wilson
1010 Windwood Drive
Anderson, SC 29621
864-224-9998



From: ROBERT L EAKER [<mailto:hisenterprises@bellsouth.net>]

Sent: Saturday, October 15, 2011 12:22 AM

To: Contact

Subject: Letter of protest in docket 2007-286-WS

Dear Public Service Commision,

Please see the attached letter of protest. Thank you for your attention to this matter.

Sincerely,
Frankie Eaker
738 Woodlake Road
Anderson, S. C. 29621

Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Phone: 803-896-5100
Fax: 803-896-5199
www.psc.sc.gov

Email form to: contact@psc.sc.gov



* Required Fields

Letter of Protest
in Docket * 2007 - 286 - WS

Date: * October 17, 2011

Protestant Information:

Name * Frankie L. Eaker

Mailing Address * 738 Woodlake Road

City, State Zip * Anderson, S. C. 29621 Phone * (864)226-9924

E-mail

1. What is your connection or interest in this case? * For example, are you a customer of the Company that is the subject of this pending proceeding? (This section must be completed. Attach additional information if necessary.)

I am a customer of the Utilities Services of SC.

2. Please give a concise statement of your protest. * (This section must be completed. Attach additional information if necessary.)

3. Do you wish to make an appearance at a hearing in this proceeding, if scheduled, and offer sworn testimony? *
(This section should be completed.)

At this late date I do not think I can offer testimony.